

(b) *Assistance instrument* is a general term which identifies a class of instruments used to award assistance. These instruments include grant and cooperative agreements, as defined in § 385.32 (c) and (d) of this part.

(c) *Act* means the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224).

(d) *MarAd* means the Maritime Administration within the Department of Transportation.

(e) *Secretary* means the Secretary of Transportation.

(f) *Maritime Administrator* means the Maritime Administrator, Department of Transportation to whom the Secretary has delegated authority to administer within MarAd the provisions of the Act.

(g) *Grants Officer* means the primary delegate of the Maritime Administrator responsible for administration of grants and cooperative agreements for research and development within MarAd.

(h) *Awards Officer* means the principal executive subordinate to the Grants Officer responsible for the day-to-day administration of grants and cooperative agreements for research and development.

#### GENERAL POLICIES

#### § 385.31 Scope.

Sections 385.31 through 385.62 set forth the regulations applicable to all assistance instruments as defined herein.

#### § 385.32 Selection of award instrument.

(a) *General.* This section provides guidance on the appropriate use of award instruments consistent with the Act and the supplementary interpretative guidelines required by section 9 of the Act, which were published by the OMB in the FEDERAL REGISTER of August 18, 1978 (41 FR 36860), and are incorporated by reference herein. This section applies to all program and individual transactions where the choice of award instruments is within the administrative discretion of MarAd and is not otherwise prescribed or limited by law. A variety of award instruments is available as the means for defining the

terms and conditions and the nature of the relationship between MarAd and eligible recipients. The award instruments are intended to be different in purpose, application, content, and nature. When properly employed, they create different relationships between the parties. Because of these differences, the decision to use a particular instrument must be made deliberately. The determination of whether a program, to be implemented through individual transactions, is principally one of acquisition or assistance will be made by the Grants Officer. MarAd generally will employ the cooperative agreement form of assistance instrument but will employ the grant form where deemed appropriate.

(b) *Procurement contract.* A procurement contract shall be used as the legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever (1) the principal purpose of the instrument is the acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or (2) whenever MarAd determines in a specific instance that the use of a type of procurement contract is appropriate.

(c) *Grant agreement.* A type of grant agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the state or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between MarAd, acting for the Federal Government, and the state or local government or other recipient during performance of the contemplated activity.

(d) *Cooperative agreement.* A type of cooperative agreement shall be used as